RECENT CASES

ARMY AND NAVY — WRONGFUL ENLISTMENT OF MINOR — RIGHT OF PARENTS TO DISCHARGE. — A minor by fraudulently misrepresenting his age succeeded in enlisting in the National Guard of a state after it had been drawn into the government service. His parents requested his discharge, which was refused. They thereupon obtained a writ of *habeas corpus* to be served upon the military authorities, but before service of the writ the minor had been arrested to await trial for fraudulent enlistment. There was a rehearing on the writ. *Held*, that the prisoner be released. *Ex parte Avery*, 235 Fed. 248.

At common law a minor's contract of enlistment is not voidable either at his own or his parents' instance. *Commonwealth* v. *Gamble*, 11 Serg. & R. (Pa.) 93; *United States* v. *Blakeney*, 3 Gratt. (Va.) 405. Nor may a parent obtain the discharge of a minor where a statute fixes the military age at eighteen, but makes no mention of a necessity of the parent's consent. *Acker* v. *Bell*, 62 Fla. 108, 57 So. 356. The federal statute, however, requires the consent of the parent or guardian. See U. S. REV. STAT., §§ 1116, 1117. Under this statute the minor himself may not avoid his contract. *In re Morrissey*, 137 U. S. 157. But see *In re Baker*, 23 Fed. 30; *Commonwealth* v. *Cushing*, 11 Mass. 67. But while all authorities agree that the parent may avoid the contract, there has been a great diversity of opinion as to the parents' right to do so before the minor has paid the penalty of his crime. *Ex parte Lisk*, 145 Fed. 860; *Ex parte Bakley*, 148 Fed. 56, 152 Fed. 1022; *Dillingham* v. *Booker*, 163 Fed. 696; *Ex parte Lewkowitz*, 163 Fed. 646. The court in the principal case reached its decision by finding that the jurisdiction of the civil court had attached before that of the court martial. However, the jurisdiction of the court martial is not distinct from that of the military authorities. But the question is not one of different courts of equal jurisdiction attempting to dispose of the same matter; the sole concern on a writ of *habeas corpus*, is whether the detention is lawful. See *United States* v. *Williford*, 220 Fed. 291. As the enlistment was good, though voidable, it follows that immediately upon the crime the military authorities had a legal right to hold the minor for court martial. *Ex parte Lewkowitz*, *supra; United States* v. *Williford*, *supra*. The writ must therefore fail upon such detention.

BANKRUPTCY — ADMINISTRATION — RIGHT OF STOCKHOLDERS OF BANKRUPT BUILDING AND LOAN ASSOCIATION TO VOTE FOR TRUSTEE. — A building and loan association became bankrupt. It owned $750,000 worth of assets, and was subject to stockholders' claims to that amount, but it owed only $12,000 to outside creditors. The stockholders were allowed to vote for the trustee in bankruptcy. *Held*, that this is proper. *Merchants National Bank* v. *Continental Building & Loan Association*, 232 Fed. 828 (Circ. Ct. App., 9th Circ.).

Only creditors having a provable claim are entitled to vote for a trustee in bankruptcy. U. S. COMP. STAT., §§ 9585 (9), 9628. A stockholder of an ordinary corporation is clearly not, as such, a creditor. A building and loan association is formed for the purpose of accumulating a fund from the stock subscriptions of its members in order to make loans to them. The stockholders, like those of any other corporation, are liable to contribute to losses to the amount of their shares. *McGrath* v. *Hamilton Savings & Loan Association*, 44 Pa. St. 383. But they have the privilege of withdrawing, and then become creditors of the association, though their claims are deferred to those of outside creditors. *Christian's Appeal*, 102 Pa. St. 184. The association is expected ultimately to pay back all its stock subscriptions. Hence, as is forcibly shown by the principal case, its liability to outsiders is never more than a small fraction of that